

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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EMPLOYERS MUTUAL CASUALTY
COMPANY, an insurance company
incorporated in the State of Iowa;

Plaintiff,

V.

VERSATILE BUILDERS, INC; JULIUS
BLOOMSTON and HEIDI BLOOMSTON

Defendants.

CIVIL ACTION NUMBER

CV 2:05CV789 - C

COMPLAINT FOR DECLARATORY JUDGMENT

PARTIES AND JURISDICTIONAL ALLEGATIONS

1. Plaintiff Employers Mutual Casualty Company ("EMCC") is an insurance company incorporated and organized under the laws of the state of Iowa, having its principal place of business in the State of Iowa.

2. Defendant Versatile Builders, Inc. is incorporated and organized under the laws of the State of Alabama, having its principal place of business in the State of Alabama and as such is a citizen of the State of Alabama.

3. Defendant Julius Bloomston is an individual who is a citizen of the State of Alabama and is over the age of nineteen (19) years old.

4. Defendant Heidi Bloomston is an individual who is a citizen of the State of Alabama and is over the age of nineteen (19) years old.

5. Defendant Versatile Builders, Inc. is a defendant in an underlying matter pending in the Jefferson County Circuit Court, styled, *Julius and Heidi Bloomston v. Versatile Builders, Inc.*, CV 05-2643 ("the underlying action"). Defendants Julius and Heidi Bloomston are the plaintiffs in

the underlying action. (See the underlying complaint attached as Exhibit A).

6. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. The plaintiffs in the underlying case sued Versatile Builders, Inc. arising out of alleged construction and excavation defects to the plaintiffs' home. (See the underlying complaint attached as Exhibit A). Although the underlying complaint does not contain an ad damnum clause, the nature of the claims and allegations of damages, including punitive damages, demonstrate that the underlying plaintiffs are claiming more than \$75,000.00 against the underlying defendant. As such, jurisdiction is predicated on diversity of citizenship and the amount in controversy, 28 U.S.C. §1332 and on the Federal Declaratory Judgment Act, 28 U.S.C. §2201.

UNDERLYING LAWSUIT

7. The underlying plaintiffs filed their original complaint against Versatile Builders, Inc., et al. on or about May 4, 2005. The complaint, styled, *Julius and Heidi Bloomston v. Versatile Builders, Inc.*, was originally filed in the Circuit Court of Jefferson County, Alabama and numbered CV 05-2643. (A copy of the complaint is attached as Exhibit A).

POLICY PROVISIONS

8. Employers Mutual Casualty Company issued Commercial General Liability Policy Number 9D7-26-63 (hereinafter "the Policy") to Versatile Builders, Inc. for effective dates April 1, 1999 through April 1, 2000 and again from April 1, 2000 through April 1, 2001. The Policy was cancelled on April 1, 2001. A true and correct copy of the Policy (both years) is attached to this Complaint as Exhibit B, and the provisions of the Policy are adopted and incorporated herein by reference.

9. Versatile Builders, Inc. is not entitled to coverage under the subject Policy for the claim(s) asserted against it in the underlying action based on, among other policy provisions, the

following: (1) the insuring agreement; (2) the policy period; (3) definition of "bodily injury"; (4) the definition of "property damage"; (5) the definition of "occurrence"; (6) the exclusion for expected or intended injury; (7) the exclusion for damage to property; (8) the exclusion for damage to your work; (9) the exclusion for damage to impaired property or property not physically injured; (10) the exclusion for injury or damage from earth movement; (11) Late Notice; and (12) other policy provisions.

10. There is a justiciable controversy which requires the court to declare the rights, remedies, obligations and liabilities of the parties under the Policy.

REQUESTED RELIEF

Wherefore, premises considered, EMCC requests the court to grant the following relief:

A. Declare that EMCC does not have a duty to defend and/or indemnify Versatile Builders, Inc. for the claim(s) asserted against it in the underlying action, and that accordingly EMCC is not required to satisfy any judgment entered against Versatile Builders, Inc. in the underlying action; and

B. Grant EMCC such other, further or different relief to which it may be entitled.



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PLEASE SERVE DEFENDANTS BY CERTIFIED MAIL AT:

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c/o Registered Agent Marie Robertson
1116 Old Section Road Southeast
Birmingham, Alabama 35244

Julius Bloomston
3721 Shamley Circle
Mountain Brook, Alabama 35223

Heidi Bloomston
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Mountain Brook, Alabama 35223